

REMARKS/ARGUMENTS

In response to the Office Action of November 1, 2005, Applicants request re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Claim Status/Support for Amendments

Claims 1, 39, 42 and 44 have been amended. Claims 2-38 were cancelled in a previous response (filed on August 25, 2003). Claims 39-46 are withdrawn from consideration. It is understood that claims 39-46, drawn to the non-elected invention, will remain pending, albeit withdrawn from consideration on the merits at this time. If the examined claim of the Group I invention is deemed to be allowable, rejoinder of the remaining claims (39-46) in accordance with the decision in *In re Ochiai* is respectfully requested; since the remaining claims (39-46) are limited to the use of the biopolymer marker of claim 1 (the examined claim of the elected Group I invention).

Claim 1 is currently under examination. Claims 1 and 39-46 remain pending in the instant application.

No new matter has been added by the amendment to the specification made herein.

The paragraph at page 24 has been amended to correct a

typographical error (luymph to lymph).

No new matter has been added by the amendments to the claims made herein.

Claim 1 has been amended to clarify that the claimed biopolymer marker evidences a link to Type II diabetes (see page 35, lines 14-18 and page 46, lines 4-12 of the instant specification as originally filed).

Claim 39 has been amended to clearly indicate how the presence of the claimed biopolymer marker is determined from mass spectral profiles. The changes to claim 39 find basis throughout the original disclosure, see, for example, page 38, line 20 to page 40, line 6 and Figure 1.

Claims 39 and 44 have been amended to remove the term "isolated".

Claim 42 has been amended to clarify that the recited Markush group is a group of different mass spectrometric techniques.

Request for Rejoining of Claims

Considering that claims 39-46 are limited to the use of SEQ ID NO:1 a search of these claims would encompass this specific sequence. The instant application is related in claim format to several other applications, both pending and issued, of which serial number 09/846,352 is exemplary. In an effort to maintain

equivalent scope in all of these applications, Applicants respectfully request that the Examiner consider rejoining claims 39-46 in the instant application, which are currently drawn to non-elected Groups, with claim 1 of the elected Group under the decision in *In re Ochiai* (MPEP 2116.01), upon the Examiner's determination that claim 1 of the elected invention is allowable and in light of the overlapping search. If the biopolymer marker of SEQ ID NO:1 is found to be novel, methods and kits limited to its use should also be found novel.

Rejection under 35 USC 102(e)

Claim 1, as presented on July 19, 2005, stands rejected under 35 USC 102(e) as allegedly being anticipated by Durham et al. (US Patent Application Publication 2004/0022794 A1).

The Examiner asserts that the instant claim 1 is drawn to an isolated biopolymer marker consisting of SEQ ID NO:1 and asserts that the prior art of Durham et al. teaches the sequence structure consisting of SEQ ID NO:1 of the instant claimed invention (see page 12, SEQ ID NO:25).

SEQ ID NO:1 of the instant invention is a fragment of apolipoprotein consisting of twelve amino acid residues, KALVQQMEQLRQ (see page 46, lines 4-12 of the instant specification as originally filed and the Sequence Listing filed on February 13,

2002). SEQ ID NO:25 of Durham et al. is a fragment of apolipoprotein consisting of ten amino acid residues, ALVQQMEQLR (see page 12, of Durham et al.). Thus, SEQ ID NO:25 of Durham et al. encompasses only a portion of the sequence structure of the claimed SEQ ID NO:1 (amino acid residues 2-11).

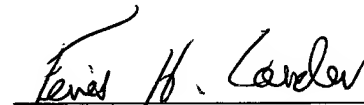
The instant claim 1 recites the phrase "consisting of". Since "consisting of" is closed language and excludes any element, step or ingredient not specified in the claim (see MPEP 2111.03), the scope of the instant claim now encompasses only the specifically claimed SEQ ID NO:1, KALVQQMEQLRQ thus, excluding the peptide of Durham et al., ALVQQMEQLR. No where does Durham et al. specifically teach the claimed biopolymer marker sequence (SEQ ID NO:1). Nor does Durham et al. teach any peptide which is indicative of a link to Type II diabetes.

Accordingly, Applicants respectfully submit that the claim, as instantly presented, now distinguishes over the sequence taught by Durham et al. and respectfully request that this rejection under 35 USC 102(e) be withdrawn.

CONCLUSION

In light of the foregoing remarks, amendment to the specification and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,



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